

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,
IDAHO CONSERVATION LEAGUE,
SIERRA CLUB, and MI FAMILIA VOTA,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants,

and,

AMERICAN FOREST & PAPER
ASSOCIATION, AMERICAN
PETROLEUM INSTITUTE, and
NATIONAL MINING ASSOCIATION,
NATIONAL STONE, SAND, & GRAVEL
ASSOCIATION,

Intervenor-
Defendants.

No. 2:20-CV-0950-JCC

JOINT STATUS REPORT AND
STIPULATED MOTION TO FURTHER
STAY PROCEEDING

NOTE ON MOTION CALENDAR:
JUNE 30, 2021

Pursuant to Local Rules 7(d)(1) and 10(g) and in accordance with this Court's Order, Dkt. No. 50 (May 24, 2021), Plaintiff, Defendants ("the Agencies"),¹ and Intervenor-Defendants hereby submit this joint status report and jointly move to further stay the above-captioned proceeding until October 1, 2021. The Parties have good cause for this request:

1. In this proceeding, Plaintiffs are challenging two rules promulgated by the Agencies that define the phrase "waters of the United States" in Section 1362(7) of the Clean Water Act: The Navigable Waters Protection Rule: Definition of "Waters of the United States," 85 Fed. Reg. 22,250 (Apr. 21, 2020) ("NWPR"), and the Definition of "Waters of the United States" - Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) ("Repeal Rule").

2. Plaintiffs initiated this lawsuit on June 22, 2020, challenging the Repeal Rule and NWPR. Dkt. No. 1. Plaintiffs specifically seek to vacate and set aside the Repeal Rule and NWPR, while reinstating nearly all of the 2015 Rule. *See id.* at "Requested Relief."

3. On September 24, 2020, Plaintiffs amended their complaint, adding additional challenges against the NWPR. Dkt. No. 40.

4. On August 27, 2020, the Agencies filed a motion to consolidate this case with *Washington Cattlemen's Association v. United States Environmental Protection Agency, et al.* (2:19-CV-0596-JCC). *See* Dkt. No. 31 (noticing to the Court and the parties that the Agencies had filed a motion to consolidate this case with *Washington Cattlemen's Association v. United States Environmental Protection Agency, et al.* (2:19-CV-0596-JCC) (Dkt. No. 87)). That motion is still pending.

¹ EPA Administrator Michael Regan and Acting Assistant Secretary of the Army for Civil Works Jaime Pinkham are automatically substituted for their predecessors in office pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

5. On August 20, 2020, third-party Patagonia Works filed a motion to intervene on behalf of Plaintiffs in this proceeding. Dkt. No. 21. The Agencies opposed Patagonia Works' motion to intervene. Dkt. No. 35. This motion is also still pending.

6. There are no other outstanding motions or deadlines before the Court in this matter.

7. On January 20, 2021, President Biden issued an Executive Order entitled "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 Fed. Reg. 7037 (Jan. 25, 2021) ("EO 13990"). In conformance with the Executive Order, the Agencies began reviewing a number of regulations promulgated in the last four years, including the NWPR at issue in this case.

8. In light of this directive, on February 5, 2021, the Parties filed a stipulated motion to stay the proceeding for 90 days to accommodate the Agencies' review of the NWPR. Dkt. No. 46. The Court granted the motion on February 8, 2021, staying the case until May 1, 2021. Dkt. No. 47.

9. On April 29, 2021, the Parties filed another stipulated motion to continue the stay until July 1, 2021. Dkt. No. 49. The Agencies noted that Michael Regan had only recently been sworn in as EPA Administrator and that the review of the NWPR was ongoing. *Id.* To provide sufficient time to allow the new Administrator to make an informed decision regarding the NWPR, the Agencies asked that the Court extend the stay until July 1. *Id.* On May 24, 2021, the Court granted the stipulated motion to continue this proceeding until July 1, 2021. Dkt. No. 50.

10. On June 9, 2021, the Agencies issued a press release stating that, after reviewing the NWPR, they have decided to initiate new rulemaking to revise the definition of "waters of the United States." See <https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus> (last accessed June 25, 2021).

11. In light of this new rulemaking, the Parties all agree that the stay in the proceeding should be extended another three months, until October 1, 2021, when the Parties can then reassess how this litigation should proceed. By October 1, 2021, the Parties will file a joint status

1 report and proposal(s) to further govern proceedings. Granting this motion will not prejudice any
 2 party and would promote judicial economy.

3 12. To be sure, the Agencies have filed motions to remand the NWPR without vacatur
 4 in a number of other proceedings where the NWPR is being challenged. *See Conservation Law*
 5 *Foundation v. EPA*, 20-cv-10820-DPW (D. Mass.) at Dkt. No. 113 (June 9, 2021); *South*
 6 *Carolina Coastal Conservation League, et al. v. Regan, et al.*, 2:20-cv-01687-BHH (D.S.C.) at
 7 Dkt. No. 140 (June 21, 2021); *Waterkeeper Alliance, Inc., et al. v. Regan, et al.*, 3:18-cv-03521-
 8 RS (N.D. Cal.) at Dkt. No. 111 (June 22, 2021); *Navajo Nation v. Regan, et al.*, 2:20-cv-00602-
 9 MV-GJF (D.N.M.) at Dkt. No. 32 (June 22, 2021). Notwithstanding these filings, the Parties
 10 here agree that it would be appropriate to further hold this litigation in abeyance for now. The
 11 Agencies may decide to file a similar motion to remand the NWPR in this proceeding at a later
 12 date.

13 13. Accordingly, the Parties request to stay this proceeding until October 1, 2021.
 14 This stipulated motion is without prejudice to the right of any party to seek a further stay at the
 15 end of the abeyance period. The Parties retain the right to move this Court to lift the stay prior
 16 to the end of the abeyance period if circumstances warrant resuming litigation.

17 14. For the foregoing reasons, the Parties respectfully request that the Court stay this
 18 proceeding until October 1, 2021. The Parties will file a joint status report and proposal(s) to
 19 further govern proceedings by no later than October 1, 2021.

20 Dated: June 30, 2021

Respectfully submitted,

21 ///

22 ///

/s/ Hubert T. Lee

HUBERT T. LEE

SONYA J. SHEA

Trial Attorneys

Environmental Defense Section

U.S. Department of Justice

P.O. Box 7611

Washington, DC 20044

(202) 514-1806 (Lee)

(303) 844-7231 (Shea)

Hubert.lee@usdoj.gov

Sonya.Shea@usdoj.gov

COUNSEL FOR DEFENDANTS

/s/ Janette K. Brimmer

JANETTE K. BRIMMER

Earthjustice Northwest Office

705 2nd Ave., Suite 203

Seattle, WA 98104

Telephone: (206) 343-7340

Email: jbrimmer@earthjustice.org

COUNSEL FOR PLAINTIFFS

/s/ James A. Tupper, Jr.

TUPPER MACK WELLS PLLC

James A. Tupper, Jr., WSBA No. 16873 2025

First Avenue, Suite 1100

Seattle, WA 98121

(206) 493-2300

tupper@tmw-law.com

MAYER BROWN LLP

Timothy S. Bishop*

Colleen M. Campbell*

1999 K Street NW

Washington, DC 20006

(202) 263-3000

tbishop@mayerbrown.com

ccampbell@mayerbrown.com

Brett E. Legner*

71 S. Wacker Drive Chicago, IL 60606
Telephone: (312) 701 7829 Facsimile: (312) 706
8607
blegner@mayerbrown.com

COUNSEL FOR INTERVENOR-
DEFENDANTS

**Pro hac vice*

[Proposed] Order

It is ORDERED that the above-captioned proceeding be stayed until October 1, 2021.

It is further ORDERED that the Parties file a joint status report and proposal(s) to further govern proceedings by no later than October 1, 2021.
IT IS SO ORDERED.

Hon. John C. Coughenour
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2021, I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ Hubert T. Lee

Hubert T. Lee